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November 29, 2004

## VIA HAND DELIVERY

Mr. George N. Dorn, Jr.  
Executive Director  
Public Service Commission of South Carolina  
101 Executive Center Dr., Suite 100  
Columbia, SC 29210

Re: Petition of Columbia Energy LLC's for a Declaratory Order Concerning  
Agreement with SCE&G for Waiver of Qualifying Facility Status,  
Docket No. 2004-267-E

Dear Mr. Dorn:

On Thursday, November 18, 2004, the Commission considered the above-captioned matter at its agenda meeting held on that day. Based upon documents filed by South Carolina Electric and Gas ("SCE&G") and Columbia Energy, LLC ("Columbia Energy"), SCE&G is informed and believes that the following pleadings have been filed with the Commission in the above-captioned matter, namely:<sup>1</sup>

1. Petition of Columbia Energy LLC for a Declaratory Order Concerning Agreement with SCE&G for Waiver of Qualifying Facility Status, filed by Columbia Energy on September 10, 2004 ("Petition"), requesting the Commission to decide on the enforceability of a Settlement Agreement (contract) between Columbia Energy and SCE&G;

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<sup>1</sup> Progress Energy Carolinas, Inc., ("Progress Energy") filed a Petition to Intervene on November 3, 2004, which appears to be unopposed. Based on the transcript of the November 18, 2004, Commission meeting, it appears this motion was granted. Thus, for purposes of this letter, SCE&G does not address Progress Energy's Petition to Intervene.

(Continued. . .)

2. Motion to Dismiss, filed by SCE&G on October 20, 2004, requesting that the Commission dismiss the Petition for lack of jurisdiction;
3. Motion for Oral Argument, filed by SCE&G on October 20, 2004, requesting that the Commission hold oral argument on SCE&G's Motion to Dismiss allowing each party an opportunity to present argument on the issues raised in the motion; and
4. Columbia Energy LLC's Memorandum in Opposition to SCE&G's Motion to Dismiss, filed November 15, 2004 ("Opposition Memorandum").

Columbia Energy's Petition is strongly opposed by SCE&G, and Columbia Energy appears to strongly oppose SCE&G's Motion to Dismiss. Thus, the only issue that is unopposed at this writing is SCE&G's Motion for Oral Argument on the issues raised in its Motion to Dismiss.

Based upon the actions taken and the related discussion at the Commission's agenda meeting on Thursday, November 18, SCE&G is unclear as to the Commission's intent relating to the four filings listed above in this docket. SCE&G notes that the above-captioned matter is on the Commission's agenda for Tuesday, November 30, 2004, to revisit the motions made at the November 18, 2004, agenda meeting. In view of the posture of the above-captioned matter,<sup>2</sup> SCE&G believes that the only issue ripe for Commission action is SCE&G's unopposed Motion for Oral Argument on the Motion to Dismiss.<sup>3</sup>

We further note that Columbia Energy has filed its Opposition Memorandum to SCE&G's Motion to Dismiss. SCE&G plans to file a reply by Friday, December 10, 2004. Assuming that the Commission believes that holding a hearing for the purpose of receiving oral argument will be helpful in deciding the contested Motion to Dismiss, then granting the Motion for Oral Argument would be appropriate, reserving decisions on all other matters until a hearing to receive oral argument has been completed.

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<sup>2</sup> Note that the same issues in this docket proceeding are present in a circuit court case filed by SCE&G in Calhoun County, civil action number 04-CP-09-95. In that case, Circuit Court Judge Steven H. John issued an order remanding the issues of whether the Commission has jurisdiction over the dispute and, if so, whether Columbia Energy can require SCE&G to purchase power despite the existence of the agreement between Columbia Energy and SCE&G. That order, filed October 19, 2004, is attached to Columbia Energy's Opposition Memorandum. SCE&G believes the decision is in error, and, therefore, on November 18, 2004, filed a notice of appeal from that order. The appeal is currently pending. In light of that appeal, SCE&G anticipates filing a Motion to Stay these Commission proceedings until that appeal is resolved, and such motion will be filed by Friday, December 10, 2004. This information is provided in this letter so that the Commission and the parties will not be surprised by a Motion to Stay filed by SCE&G.

<sup>3</sup> As before, this discussion excludes the Petition to Intervene.

Mr. George N. Dorn, Jr.  
November 29, 2004  
Page 3

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In summary, I appreciate the Commission recognizing that clarification of its intent may be useful. SCE&G is hopeful that the Commission's intent was to grant the only unopposed motion filed by SCE&G that was before it on Thursday, November 18, and to defer ruling on any other issues until full and complete oral argument by all parties has been received and considered by the Commission, at which time a ruling would be made on SCE&G's Motion to Dismiss. SCE&G believes that the Motion for Oral Argument is the only issue ripe for determination now and that there are no other issues appropriate for Commission action at its meeting on Tuesday, November 30.

Thank you for this opportunity to present our views regarding the Commission's revisitation of this matter at its agenda meeting on November 30.

Sincerely,

WILLOUGHBY & HOEFER, P.A.

A handwritten signature in black ink that reads "Mitchell Willoughby". The signature is written in a cursive, flowing style with a large, prominent "M" and a long, sweeping underline.

Mitchell Willoughby

MW/jmb

cc: Honorable Randy Mitchell, Chairman  
Honorable G. O'Neal Hamilton, Vice Chairman  
Honorable John E. Howard  
Honorable David A. Wright  
Honorable Elizabeth B. Fleming  
Honorable Mignon L. Clyburn  
Honorable Charles Moseley  
Dr. James Spearman  
Frank R. Ellerbe, III, Esquire  
David F. Butler, Esquire  
Len S. Anthony, Esquire (via e-mail)